IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 461 OF 2003.
(Under Section 173 of Motor vehicles Act)

District : Udham Singh Nagar.

The Oriental Insurance Company Limited,
Divisional Office Haldwani,
District Nainital, through its Divisional Manager.
…….. Appellant,

Versus

1. Smt. Pushpa Sanwal, s/o late Jagdish Chandra Sanwal,
2. Deepak Sanwal (minor) s/o late Jagdish Chandra Sanwal,
3. Pallavi Sanwal(minor d/o late Jagdish Chandra Sanwal,
   (Respondent No.2 and 3 through their natural guardian
   Smt. Pushpa Sanwal w/o late Jagdish Chanda Sanwal)
   Residents of village Chutaki, Post Devariya, Kichha,
   District Udham Singh Nagar.
   …….Claimants/Respondents.

4. Sri Khushal Singh s/o Sri Prem Singh,
   R/o Vichotkhera, P.O. Dharkhola,
   District Almora, presently c/o Sri Sunder
   Lal, Village Bandiya, Tahsil Kichha,
   District Udham Singh Nagar.
   ……Respondent/Opposite Party

For the appellant : Sri Pankaj Purohit, Advocate,

For the respondents: Sri Syed Nadim and
Sri G.C. Kandpal, Advocates.

September 3, 2004.

Hon'ble P.C.Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been filed against award of compensation passed by M.A.C.T./ADJ/Fast Track Court -1, Udham Singh Nagar on 3.11.2003 in M.A.C. No.189/2002.

Sri Jagdish Chandra Sanwal riding on his cycle, near Dhanvantri Clinic, was hit from behind by Matodor No.DL 1C/B 7726 on 17.4.2002 when he was going towards Kichha Sugar Mill from his house, receiving grievous injuries and was declared dead when he was taken to the hospital. He was aged 43 years and getting salary of Rs.4879.50 p.m. The owner of the vehicle blamed the deceased for the accident and the insurance company also filed its written statement. The learned Tribunal on a consideration of evidence adduced by the parties, found that the accident took place by the rash and negligent driving of the driver of matador and not for any negligence on the part of deceased. On the basis of salary of the deceased and making necessary deductions, the learned Tribunal determined the loss of dependency at Rs.31,200/- per annum and using the multiplier of 15, assessed the compensation at Rs.4,75,000/-. Besides the award in question, the appellant has also challenged the order dted 11.12.203 of the Tribunal rejecting review application of the appellant.

In this appeal, the appellant has stated that the driver (respondent No.4) was not holding a valid driving license at the time of accident. It is also stated on behalf of the appellant that the age of the deceased was 46 years and not 43 years and as such the multiplier applied was wrong.

We have heard the lenred counsel for parties. So far as the question of driving license is concerned, the plea was raised by way of a review petition after pronouncement of the judgment and even then the learned Tribunal has recorded a finding with that regard and found that the said license was valid and had been issued much before the date of accident. We find no fault with this finding of the learned Tribunal. No plea about the age of the deceased was raised before the Tribunal who has fixed the age on the basis of evidence before it. Nothing has been shown

on this point to this Court as well. Therefore, there is no force in the argument of the lenred counsel for appellant in this respect also.

The appellant insurance company has also raised the ground that by using the multiplier 15 instead of 13, the award is on the higher side. This ground is not available to the insurer/appellant because no permission under section 170 of the Act has been sought before and granted by the Tribunal to the appellant to contest the case on the grounds available to the insured or the person against whom claim has been preferred. The Apex Court in National Insurance Company Ltd., Chandigarh vs. Nicolletta Rohtagi and others, (2002) 7 Supreme Court Cases 456 observed that even if no appeal is preferred under S.173 of 1998 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantumof compensation as well as findings as regards negligence or contributory negligence of the offending vehicle. Thus, this law is fully applicable in the present appeal and the contention of the appellant is not tenable on this point also.

Therefore, we are of the opinion that this appeal has no force and is liable to be dismissed.

The appeal is hereby dismissed and the judgment of the learned Tribunal is affirmed. The compensation, if deposited by the appellant, be remitted to the Tribunal concerned. No order as to costs.

(B .S.Verma, J.) (P.C. Verma, J.)

SPA/3.9.04